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Insanity--An Argument for Partial Responsibility

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Notes and Comments

INSANITY—AN ARGUMENT FOR PARTIAL RESPONSIBILITY

"The memorials of our jurisprudence are written all over with cases in which those who are now understood to have been insane have been executed as criminals."[1] As Professor Glueck points out, the above passage from Bishop probably presents but "one side of the shield."[2] He indicates that numerous persons have doubtlessly been acquitted on the plea of insanity although they were not properly to be classified as mentally diseased or feebleminded.[3]

Glueck believes that the most outstanding characteristic of the law of insanity, as found in the cases in the various state reports, is "confusion." He states:

> "Perhaps in no other branch of American law is there so much disagreement as to fundamentals and so many contradictory decisions in the same jurisdictions. Not a modern text or compilation begins the discussion of the subject of insanity and its relation to the criminal law without a doleful reference to the chaos in this field."[4]

Chaotic uncertainty has characterized the law of insanity since 1843 when the English judges promulgated the rules in *McNaughton's Case*.[5] There judges rounded up a mass of early and out-moded concepts[6] and applied them in the abstract.[7] It was after, rather than dur-

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[1] 1 BISHOP, CRIMINAL LAW 287 (9th ed., 1923).

[2] GLUECK, MENTAL DISORDER AND THE CRIMINAL LAW 187 (1925).

[3] *Ibid.*

[4] *Ibid.*

[5] 10 Clark and F. 200, 8 Eng. Rep. 718 (1843). McNaughton was said to be suffering from an insane delusion that Prime Minister Sir Robert Peel was plotting against him. By reason of this delusion, the defendant set out to kill Sir Robert. By mistake, however, he killed one Drummond, the prime minister's secretary. The jury found McNaughton "Not guilty on the ground of insanity." Popular excitement and dissatisfaction over the case led the House of Lords to pose five questions concerning insanity to the Judges. The answers to these questions have become known as the *McNaughton Rules*. See WEIHOFEN, INSANITY AS A DEFENSE IN CRIMINAL LAW 25 *et seq.* (1933).

[6] Note 40 KY. L. J. 311 (1952). "Both before and after that time the various definitions of a madman termed him a brute or wild beast, a child less than 14, or one unable to number twenty pence."

[7] *Id.* at 312. "The rules laid down in 1843 by the justices in *McNaughton's Case* have been the subject of numerous and varied criticisms. First of all it is pointed out that the rules were laid down extra-judically, i.e., they were simply the replies of judges to certain questions put to them not during but after *McNaughton's Case*. They were not based on any one case and the judges were obliged to law down the law without hearing evidence or argument of counsel. It was on this point that Justice Maule, the lone dissenter among the 15 judges, took issue with his colleagues." See MEREDITH, INSANITY AS A CRIMINAL DEFENSE 29 (1931).

ing *McNaughton's Case* that the judges wrote answers to a series of questions propounded by the House of Lords. In a composite answer to the second and third questions the Court laid down the modern test for insanity:[8]

> "In all cases . . . it must be clearly proved that, at the time of committing the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was committing or if he did know it that he did not know that it was wrong."

The view of the American jurisdictions which follow this so-called "right-and-wrong" test is that, for the purpose of determining responsibility for crime, individuals are to be divided into two classes only, viz., the wholly sane and the wholly insane, a classification with which the medical profession bitterly disagrees.[9] The courts in applying the McNaughton rules have presupposed that there is a clear demarcation between persons who are mentally sound and those who are unsound and that the ability to distinguish right from wrong is the magic line that can be infallibly drawn in all cases. Justice Murphy sounded the battle cry against this manifest absurdity in his dissent in the recent case of *United States* v. *Fisher:*[10]

> ". . . the frontiers of criminal law . . . are slowly but undeniably expanding under the impact of our increasing knowledge of psychology and psychiatry."
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> "The existence of general impairment, or partial insanity, is a scientifically established fact. There is no absolute or clear-cut dichotomous division of the inhabitants of this world unto the sane and the insane. 'Between the two extremes of sanity and insanity lies every shade of disordered or deficient mental condition, grading imperceptibly one into another.' "[11]

Meredith indicates the wide range and variation of mental abnormalities when he writes that:

> "It has been said that one in every hundred persons is 'insane in one way or another' and that the civilized world is full of

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[8] *McNaughton's Case* is still followed by the majority of jurisdictions as the test for insanity as a defense in criminal law. 1 BURDICK, LAW OF CRIMES 277 (1946); *Glueck, op. cit. supra* note 2, at 214. See SAYRE, CASES ON CRIMINAL LAW 487, n. 1 (1927).

[9] Taylor, *Partial Insanity as Affecting the Degree of Crime—A Commentary on Fisher v. United States,* 34 CALIF. L. REV. 625, 629 (1946); 1 WHARTON, CRIMINAL LAW 85 (1912); WHITE, INSANITY AND THE CRIMINAL LAW 89 (1923).

[10] 328 U.S. 463 (1945).

[11] *Id.* at 491. See Weihofen, *Partial Insanity and Criminal Intent,* 24 ILL. L. REV. 505, 508 (1930). WHITE, *op. cit. supra* note 9, writes: "To conceive that an individual is either absolutely responsible or absolutely irresponsible is to fly in the face of perfectly patent facts that are in everybody's individual experience and is only comparable to such beliefs of the Middle Ages that a person is possessed of a devil or is not possessed of a devil, and therefore is or is not a free moral agent."

> men and women who are 'warped'[12] and in whom a varying degree of mental unsoundness exists."[13]

And yet the courts still employ a century old test for insanity which leaves no room for intermediary stages of mental aberration. A defendant is either to be judged insane and thus not responsible for his criminal acts or else he must be declared totally sane and thereby strictly accountable for his wrongdoings.[14] In order to be excused from responsibility, the offender must be suffering from some mental disorder that will fit the McNaughton test.[15] If the disturbance is such that the defendant still knows the nature and quality of the act and that it is wrong, he must suffer the full consequences of his act. He must be either convicted or acquitted in cases calling for an intermediary determination. This refusal to recognize a middle ground is still followed by the majority of jurisdictions today and constitutes a serious objection to the McNaughton rules.[16]

The archaic idea that an individual is either sane or insane developed at a time when popular thought conceived of physical disease as a state entirely different from that of health.[17] But there is no sharp

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[12] GRASSET, THE SEMI-INSANE AND THE SEMI-RESPONSIBLE 272 (Jelliffe translation, 1907) states, however, ". . . the semi-insane are very often intelligent, so intelligent in fact, that they may be men of talent and even of genius . . . (Nevertheless) the semi-insane are sick people and . . . they must be cared for."

[13] MEREDITH, *op. cit. supra* note 7, at *ix* (*preface*).

[14] "The old common law authorities took the ground that sanity and insanity are states as clearly and absolutely distinguishable as are coverture and non-coverture; and that men are either wholly sane, so as to be wholly responsible, or wholly insane, so as to be wholly irresponsible. This principle, however, is now abandoned as based on a psychological untruth. There are many degrees both of sanity and insanity; and the two states approach each other in imperceptible graduation, melting into each other, . . . as day melts into night." WHARTON, *op. cit. supra*, note 9, as quoted by Taylor, *op. cit. supra* note 9, at 629.

The famous French psychologist, GRASSET, *op. cit. supra*, note 12 at 34 *et seq.*, describes and ridicules the so-called "two block" theory which holds that men are divided into two groups, the sane and the insane. No such convenient division may be made such as in the axiom that "All those in a cemetery are dead, and all those outside of the cemetery are living." In Chapter 3 (77-179) he presents a large collection of medical evidence as to the existence and nature of partial insanity. He writes: "There is a gradation and continuity from the perfectly reasonable being to the wholly insane. In a general way, it is impossible to draw any absolute and fixed line of demarcation between physiological or normal phenomena and pathological or abnormal disturbance. *Id.* at 51.

[15] "Psychiatrists . . . are convinced that a crime may be the result of mental disease and yet the criminal's faculties of reason, his powers to premeditate and to scheme may be unimpaired, and indeed in many cases strengthened, by his mental condition. Legally, however, unless his powers to distinguish right from wrong, and his ability to comprehend the nature and consequences of his act are impaired, he is not immune from punishment." Note 38 YALE L. J. 368, 375 (1929).

[16] Taylor, *op. cit. supra*, note 9; Weihofen and Overholser, *Mental Disorder Affecting the Degree of Crime*, 56 YALE L. J. 959 (1947).

[17] JACOBY, THE UNSOUND MIND AND THE LAW 53 *et seq.* (1918): "Even a century ago the idea that disease was a state entirely different from that of health was widespread among physicians, as well as among people in general. Disease

dividing line between health and diseases. As Dr. Jacoby expresses it:

> "Only when the divergence from health is very pronounced and conditions have changed abruptly, as is the case in acute poisoning or infectious processes, does the contrast become so manifest that it is recognized by everyone as a state of disease."[18]

Similar considerations arose in connection with illnesses of a mental rather than a physical nature. "From eccentricities of character to paranoia, or from excited exhilaration to maniacal furor, the distance is long and the intermediary steps are numerous."[19] Dr. Jacoby sums up the problem in saying:

> "But in the domain of jurisprudence, too, the disregard of individual peculiarities has often caused the most dire error; and this applies more particularly to those Anglo-Saxon countries[20] whose statutes are still based upon the assumption that a person is either mentally healthy and entirely responsible, or else insane and entirely irresponsible. That between these two extremes there exist gradations, each characterized by a greater or lesser restriction of free determination of the will and responsibility, is a fact which has not yet been recognized to any extent by Anglo-Saxon jurisprudence."[21]

The learned English judges of the last century who promulgated the McNaughton rules appear to have had but halting faith in the efficacy and all inclusiveness of the tests they were setting forth.[22] In announcing the questions that should be submitted to a jury they added that they should be "accompanied with such observations and

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was looked upon, so to say, as a hostile agent, and not infrequently its presence was attributed to demonic influence. Virchow was the first to advocate the view that processes of disease are manifestations entirely analogous to the normal processes of life, differing from them only in degree."

[18] *Id.* at 53. "It is quite as impossible to make a precise distinction between healthy and sick individuals as it is to divide the human race into two categories, the intelligent and the stupid." *Id.* at 54.

[19] *Id.* at 59. In effect, mental disorder is nothing more than a different type of physical disease. See *id.* at 88 *et seq.* See also *id.* at 81 *et seq.* for an analysis of types of mental disorder and borderline cases.

[20] WEIHOFEN, *op. cit. supra,* note 5 at 99 declares: "This rule, that where a defendant is somewhat disordered mentally, but not to such a degree as to relieve him from responsibility for crime, his punishment should be reduced, has been adopted in the codes of some continental countries . . ." He quotes the ITALIAN PENAL CODE (ART. 47) as stating that if the defendant's mental infirmity was "such as greatly to diminish responsibility, without, however, excluding it, the punishment prescribed for the crime committed is to be reduced." Similar provisions, he declares, are to be found in the codes of Denmark, Finland, Greece, Japan, Norway, Sweden, and the Swiss cantons. See also JACOBY, *op. cit. supra,* note 17 at 48.

[21] JACOBY, *op. cit. supra,* note 17 at 62. He continues: "Even where it has been demonstrated that a particular case is one occupying the borderline, being neither normal nor distinctly pathological and in which therefore responsibility must be assumed to be attenuated, a judge under existing laws will be placed in the difficult position of having to decide either for mental health and entire responsibility or for insanity and total irresponsibility. In the first instance the decision would be too lenient, in the latter too severe . . ."

[22] GLUECK, *op. cit. supra,* note 2 at 427.

explanations as the circumstances of each particular case may require." Did the judges mean to imply that certain cases might not be solved by an application of the right-and-wrong test? Did they intend to suggest that certain cases would call for other tests and that there was room to consider intermediary states of mental abnormality lying between complete sanity and complete insanity? If this was their intention, it has not been fulfilled.

The judges did, in fact, mention a type of partial insanity. In their separate answers to the first and fourth questions, the judges promulgated what appears to be a separate test for such cases. All four questions propounded by the House of Lords, though worded differently, asked one thing: What is the law respecting the criminal responsibility of persons afflicted with insane delusion?[23] While, as noted above, the judges prefaced their composite answer to questions two and three with the phrase "in all cases", in replying separately to questions one and four, a more limited situation was apparently envisioned. The judges wrote:

> "Assuming your Lordship's inquiries are confined to those persons who labour under such partial delusions only, and are not in other respects insane . . ."[24]

Thus the court contemplated a circumstance of partial insanity. Where this particular type of mental state existed, the judges announced that the defendant:

> ". . . must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real."[25]

Enormous controversy has arisen as to the effect to be given this language. Some nine jurisdictions have considered this as a separate test for a separate mental condition called *insane delusion,* retaining the right-and-wrong test for all other forms of insanity.[26] The remain-

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[23] WEIHOFEN, *op. cit. supra,* note 5 at 73. A fifth question dealt with the admissability of expert testimony and need not be considered here. See *id.* at 27.

[24] *Supra,* note 5.

[25] *Ibid.* The judges went on to say: "For example, if under the influence of his delusion he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes in self-defence, he would be exempt from punishment. If his delusion was that the deceased had inflicted a serious injury on his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment."

[26] WEIHOFEN, *op. cit. supra,* note 5 at 75. He lists cases at 70, 71, n. 2 and 4. See also GLUECK, *op. cit .supra,* note 2 at 246. Before the opinion in *McNaughton's Case,* Lord Erskine argued eloquently that "Delusion, therefore, where there is no frenzy or raving madness, is the true character of insanity." Lord Kenyon, the judge, then stated: "With regard to the law, as it has been laid down, there can be no doubt upon earth." Hadfield's Case, 27 How. St. Tr. 1281, 314 (1800). See GLUECK, *op. cit. supra,* note 2, at 245.

ing jurisdictions apparently take the view that despite their inconsistencies, the four answers are to be taken together, rather than separately, and that the general right-and-wrong test is to prevail also in the case of insane delusion.[27] They regard the insane delusion test as merely an illustration of the application of the right-and-wrong doctrine.[28]

A stout argument that is usually raised against the above "special facts" rule is that there are no persons who suffer from "partial delusion only, and are not in other respects insane."[29] It is declared that one who suffers from an insane delusion is insane, and that one may not be sane in one respect and insane in another.[30] It is no doubt quite true that the idea of phrenology, upon which this concept was originally based,[31] is outmoded and scientifically fallacious.[32] The theory of phrenology declares that the mind is divided into compartments, each having its own location in the brain, and each functioning independently of the others.[33] Weihofen declares that:

> "Today phrenology has been relegated to the gypsy fortune-tellers of the ghettos, but the rule of law which it engendered still holds the respect of jurists."[34]

Assuming, then, the fundamental fallacy of this theory, it can readily be seen why enormous criticism has been raised against the rule of *McNaughton's Case* to the effect that insane delusion is a defense only when the facts of the delusion would be a defense if they were true.[35] An insane delusion is not something separate and apart

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[27] WEIHOFEN, *op. cit. supra*, note 5 at 75. See Banks v. Comm., 145 Ky. 800, 141 S.W. 380 (1911); Comm. v. Calhoun, 238 Pa. 474, 86 Atl. 472 (1913); People v. Schmidt, 216 N.Y. 324, 110 N.E. 945 (1915).

[28] WEIHOFEN, *op. cit. supra*, note 5 at 74.

[29] *Id.* at 76, 411. See also GLUECK, *op. cit. supra*, note 2 at 248, 430; II STEPHEN, HISTORY OF THE CRIMINAL LAW OF ENGLAND 160, 163 (1883); Keedy, *Insanity and Criminal Responsibility*, 30 HARV. L. REV. 535, 558.

[30] WEIHOFEN, *op. cit. supra*, note 5 at 76 *et seq.* Keedy, 2 *Jour. Crim. Law* 539 (1911) quotes Dr. Mercier, a distinguished psychiatrist and psychologist, as saying: "There is not, and never has been, a person who labors under partial delusion only and is not in other respects insane." See also GLUECK, *op. cit. supra*, note 2 at 249 *et seq.*

[31] WEIHOFEN, *op. cit. supra*, note 5 at 77, says that the doctrine of phrenology, which holds that the mind is divided into compartments, each having its own location in the brain, and each functioning independently of the others, was undoubtedly the source of this concept.

[32] WEIHOFEN, *op. cit. supra*, note 5 at 77, 411.

[33] *Id.* at 77.

[34] *Id.* at 78.

[35] "As has been frequently pointed out by medical and other writers, this was an absurd solution of an impossible problem (i.e., the solution of the Judges of England of the problem posed by the Lords in their questions); and the most that can be said for it is that, in some cases, it might chance to work no substantial injustice." STROUD, MENS REA 78, as quoted by GLUECK, *op. cit. supra*, note 2 at 250.

from the mind as a whole, but is rather one symptom of certain forms and stages of mental disease.[36] As Bishop phrases it:

> ". . . delusion of any kind is strongly indicative of a generally diseased mind. And doubtless sometimes if not always it does in fact extend beyond the precise point we have supposed, whether perceptibly to the casual eye or not."[37]

With this "unity of mind" theory clearly before us, it is not difficult to visualize the absurdity of a rule by which a person acting under an insane delusion is to be judged as if the facts of the delusion were real. "It judges the insane man by the same standard as the sane man . . . In other words, the law accepts the delusion, but requires him to reason about it as a sane man."[38]

However, there is a danger in stating without reservation that a mind is a unity, that there is no partial insanity, and that disease of the mind is a disease of the *entire* mind. This suggests the untenable proposition that one must be either completely sane or completely insane. Weihofen indicates that a distinction is to be drawn between the "partial insanity" to which the judges refer in *McNaughton's Case* and "partial insanity" as "mental impairment which is not so complete as to render its victim irresponsible for his criminal acts."[39] The dis-

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[36] "Delusion is not an independent phenomenon, which may exist in a mind otherwise sane, but is an external symptom, indicative of a much deeper mental disturbance." WEIHOFEN, *op. cit. supra*, note 5 at 78. "Insanity is a disease of the mind and delusion a symptom of the disease." Ryan v. People, 60 Colo. 425, 153 Pac. 756, 757 (1915).

"The theory . . . is that an isolated delusion lies imbedded, like a foreign body, in a brain which is and remains normal all around. As against this view modern science endorses the simile of Jules Falret, who likens a delusion to a parasitic plant 'which will not spring up and grow in an unsuitable soil, and the soil which is suited to it is insanity'; 'let the soil be changed to one of sanity,' rightly remarks Maudsley, 'in other words, let the mind apart from the delusion be sound, and this will dwindle and die.'" OPPENHEIMER, CRIMINAL RESPONSIBILITY OF LUNATICS 215, 216, as quoted by GLUECK, *op. cit. supra*, note 2 at 250.

[37] Quoted by GLUECK, *op. cit. supra*, note 2 at 251. "The facts that a man stammers and that the pupils of his eyes are of different sizes are in themselves no excuse for crime, but they may be the symptoms of general paralysis of the insane, which is one of the most fatal forms of the disease. Why should not the existence of a delusion be as significant as the existence of a stammer?" II STEPHEN, *op. cit. supra*, note 29 at 157.

[38] WEIHOFEN, *op. cit. supra*, note 5 at 75, 76. It has even been held in one case that an insane delusion that the defendant acted in self-defense is no excuse unless the belief was reasonable! State v. Shippey, 10 Minn. 223 (1865). In a vituperative attack upon this type of injustice, Judge Somerville wrote: "If he dare fail to reason, on the supposed facts embodied in the delusion, as perfectly as a sane man could do on a like state of realities, he receives no mercy at the hands of the law. It exacts of him the last pound of flesh . . . If this has been the law heretofore, it is time it should be no longer. It is not only opposed to the known facts of modern medical science, but it is a hard and unjust rule to be applied to the unfortunate and providential victims of disease." Parsons v. State, 81 Ala. 577, 595 (1886).

[39] *Op. cit. supra*, note 5 at 412, 413.

tinction between the two concepts was pointed out as early as 1650 by Lord Hale, who distinguished between insanity partial in respect to particular *subjects* and insanity partial as to *degree*.[40] While the older authorities apparently conceived of the mind as divided into compartments, as noted earlier, medical evidence has now established a unified mind.[41] However, there may be stages of mental irregularity that are both medically and legally regarded as less than insanity.[42] Human individuality is one and indivisible; but the psychic organs are many and complex and may vary.[43] As Grasset, the noted French psychiatrist, declares:

> "There is a gradation and continuity from the perfectly reasonable being to the wholly insane. In a general way, it is impossible to draw any absolute and fixed line of demarcation between physiological or normal phenomena and pathological or abnormal disturbances."[44]

An individual suffering from a mental disturbance may be the victim of *delusions, hallucinations,* or *illusions*.[45] Such manifestations may be present in numerous forms of disorder and at various stages thereof.[46] *Hallucinations* involve a false sense impression, *i. e.*, "the patient hears a sound, or sees, feels, or smells an object that has no objective existence."[47] *Illusions* are also sense disorders but they differ from hallucinations in that, while the latter are sense impressions without actual stimulus of the sense organ involved (such as hearing voices without anyone speaking), the former do involve an actual stimulus.[48] *Delusions* involve a false *belief* rather than a false sense impression and perception.[49]

Grasset describes the place of illusions and hallucinations in the semi-insane as follows:

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[40] *Id.* at 413.
[41] *Supra,* note 30.
[42] GRASSET, *op. cit. supra,* note 12 at 51.
[43] *Id.* at 50 *et seq.*
[44] *Id.* at 51. See also *id.* at 387.
[45] See GLUECK, *op. cit. supra,* note 2 at 296 *et seq.*
[46] See GRASSET, *op. cit. supra,* note 12 at 77 *et seq.*
[47] GLUECK, *op. cit. supra,* note 2, at 297. "The most usual hallucinations among the mentally disordered are auditory. The patient hears 'voices' addressing him in deferential phrase, or insulting him, or commanding him to do certain acts. . . . Hallucinations may result in illegal conduct; their vivid reality and compelling force may lead the patient to commit the most serious crimes, in carrying out a supposed command from the Deity, or in redressing supposed insults and threatened injuries."
[48] *Id.* at 299. "Thus the eyes of a patient with illusions may actually be stimulated by a red spot of paint, but he may perceive (interpret) it as a red rose. . . . Because of their occurrence in more or less normal states, illusions again illustrate the undesirability of making any one symptom into a test . . ." *Id.* at 300.
[49] *Id.* at 300. "They therefore constitute a disturbance of the higher activities of conscious mind, such as the weighing of evidence, formation of conclusions, passing of judgments."

> "[They] are noticed in the semi-insane to have a characteristic limitation or slight duration which permits the relative integrity of a large part of the superior phychism. Like the insane, the semi-insane may have false visual or auditory sensations; both believe them to be true; but, in spite of that, the semi-insane man not lacking in reason in any other part of his psychic domain, his error is partial, or rather, it is short in duration and has not time to distort the entire 0 center [superior physic center] of the subject."[50]

In the case of delusion, we find a progressive pattern of development from the earliest stages to extreme conditions. Kraepelin states:

> "Rather must we assume that in the many years of preparation the delusion grows only very gradually, that the patients offer resistance to the suppositions which are thrust upon them, rejecting them at first, and then after many inward struggles they are overpowered. The possibility can, therefore, scarcely be contested on principle that the development of the malady does not progress through such a period of preparation with fluctuating delusions."[51]

Delusion formations of varying intensities may be symptoms of numerous types of mental disorder. The various stages of paranoia[52] are accompanied by delusions of persecution or of grandeur.[53] Jacoby declares that, in the case of many chronic alcoholics, paranoiac delusions of a more or less systematized nature develop.[54] Glueck writes:

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[50] GRASSET, *op. cit. supra*, note 12 at 101.

[51] KRAEPELIN, MANIC DEPRESSIVE INSANITY AND PARANOIA 222 (Robertson ed., 1921).

[52] For a discussion of paranoia, its history, and case studies, see FOWERBAUGH, PSYCHO-CLINICAL STUDIES IN THE PARANOID PSYCHOSOS 1 *et seq.* (1931). KRAEPELIN, *op. cit. supra*, note 51 at 207 *et seq.* presents a comprehensive presentation of the field of paranoia. See also KRAFFT-EBING, PSYCHOPATHIA SEXUALIS 495 (Robinson ed. 1945); GLUECK, *op. cit. supra*, note 2 at 363.

[53] See GLUECK, *op. cit. supra*, note 2 at 300. "In these cases, as the terms imply, the patients believe themselves to be great personages or the victims of sinister plots against their lives or fortunes. (It is to be noted that the defendant in *McNaughton's Case, supra* note 5, was under a delusion that Sir Robert Peel, the Prime Minister of England, was plotting against him.) See KRAEPELIN, *op. cit. supra*, note 51 at 220. "The delusion here usually matures very slowly, taking many years. At first it remains within the limits of suspicious conjectures, arrogant and overweening self-conceit, secret hopes; but these draw ever fresh nourishment from the prejudiced evaluation of the experiences of life, and they became more and more fixed." Kraepelin discusses delusions of persecution, which he describes as the most frequent form of paranoia, at 225. The "related" field of delusions of jealousy is discussed at 229. Delusions of grandeur are described at 232 *et seq.* Herein the subject may conceive of himself as a great inventor, an individual of high descent, or as a saint or prophet.

[54] JACOBY, *op. cit. supra*, note 17 at 299. "The aversion which the marital consort so often experiences toward the more and more deteriorating alcoholic, the sexual impotence that follows the long use of alcohol and the marked enfeeblement of judgment constitute the basis upon which these delusions develop. All kinds of insignificant occurrences furnish the nutriment for the notion of jealousy until finally the patients are convinced of the infidelity of their conjugal partners. Gross maltreatment, dangerous physical injury or murder are the resulting offences. . . . Besides the notion of jealousy, other paranoid semblances may be present in chronic alcoholics."

> "Alcoholic insanities are but increased degrees of chronic inebriety, except, that in addition to mental deterioration, there are delusions, especially of a sexual nature. Delusions of infidelity, common in these psychoses, may lead to frightful murders; and in view of the fact that these delusions 'are not necessarily or even usually continuous,' and are frequently forgotten after they have passed, nice forensic questions may arise in cases where it is claimed that an offense was committed as the result of delusion."[55]

Other types of alcoholic mental disorders may involve illusions and hallucinations as well as delusions.[56] The state of delirium tremens gives rise to hallucinations of touch and sight.[57] Glueck calls this condition "maniacal" and declares:

> "'Acts of violence, horrible in their ferocity and brutality, are apt to characterize this state. Murders are sometimes committed, usually accompanied by the most savage mutilations, and often perpetrated without the slightest provocation, but are generally the result of frightful hallucinations from which the maniac suffers.'"[58]

And yet, this maniacal condition subsides and there is rarely any clear recollection of what transpired during the seizure.[59]

Thus, while we may reject the rule of *McNaughton's Case* that a so-called insane delusion is a defense only when the facts of the delusion would be a defense if true, and reject it on the ground that there is no such thing as what the judges called "partial delusion only," we should bear in mind that insanity may be partial as to degree.

The foregoing discussion of the presence of delusion, illusion and hallucination (they are sometimes erroneously used interchangeably)[60] as they are found in varying stages of mental abnormality should tend to illustrate this proposition.

As noted earlier, a majority of courts have adopted the position that the right-and-wrong test of *McNaughton's Case* is to prevail in the case of insane delusion as well as in all other forms of insanity.[61] This position is subject to the same criticism that is raised against the right-and-wrong test in other respects, *i. e.*, that it draws an arbi-

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[55] GLUECK, *op. cit. supra*, note 2 at 346.

[56] See *id.* at 343 *et seq.* And see JACOBY, *op. cit. supra*, note 17 at 343 *et seq.* Such disorders as delirium tremens, acute hallucinosis of drinkers, Korsakoff's psychosis, chronic alcoholism, alcoholic paranoia, etc., are discussed. In addition to the psychoses having their origin in alcoholic indulgence, there are mental disturbances occasioned by the use of narcotics: morphinism, cocainism, lead intoxication, etc. These maladies, too, are accompanied by sense deceptions, hallucinations, and delusions of varying stages. See *id.* at 301 *et seq.* Note 40 KY. L. J. 311, 320 (1952). See WEIHOFEN, *op. cit. supra*, note 5 at 92 *et seq.*

[57] JACOBY, *op. cit. supra*, note 17 at 289; GLUECK, *op. cit. supra*, note 2 at 345.

[58] GLUECK, *op. cit. supra*, note 2 at 345.

[59] *Ibid.*

[60] *Id.* at 298.

[61] *Supra* note 27.

trary line between complete insanity and complete sanity. The former is a defense, the latter entails complete responsibility. There is no middle ground.[62]

The better view would seem to be that insane delusion is not a separate form of mental illness which is to be subject either to the same or to a different test. Delusion, like hallucination and illusion, is rather a manifestation or symptom of mental disease and is subject to gradations and variations just as the mental abnormality itself.[63] Some writers have suggested that the presence and extent of delusion might constitute a test with which to measure the various stages of partial insanity.[64]

Whether or not the judges in *McNaughton's Case* intended to soften the strict rule of absolute responsibility or irresponsibility when they mentioned such "partial delusion only," their efforts have tended to confuse rather than to clarify the law of insanity. Manifest injustice frequently is the result.

The judges did not mention what has since been recognized by many courts as a softening of the harsh McNaughton rules. Their test of right-and-wrong does not purport to cover the field of *irresistible impulse.*[65] A minority of courts[66] have recognized this condition of

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[62] *Supra* note 9.

[63] GLUECK, *op. cit. supra,* note 2 at 175. "'The facts that a man stammers and that the pupils of his eyes are of different sizes are in themselves no excuse for crime, but they may be the symptoms of general paralysis of the insane, which is one of the most fatal forms of the disease. Why should not the existence of a delusion be as significant as the existence of a stammer?'" (Quoting STEPHEN, II HISTORY OF THE CRIMINAL LAW OF ENGLAND 157.) See *id* at 323 where he writes: "It is enough to explain why the use of external symptoms as tests of irresponsibility cannot be satisfactory; namely, that *the external symptoms are but indicative of a much deeper disturbance, the relation of which to the criminal act can only be arrived at by a process of mental analysis, and may be entirely different from that which a consideration by the jury of the superficial evidences of delusion, for example, would indicate.*"

[64] *Id.* at 175. Inasmuch as a mental disorder may be accompanied by a delusion or similar manifestation which is the only apparent evidence of maladjustment, we may be confronted with a situation which is deceptively close to that envisioned by the McNaughton judges when they spoke of such "partial delusion only." See FOWERBAUGH, *op. cit supra,* note 52 at 2, citing BLUELER, TEXTBOOK OF INSANITY 509 (1924), to the effect that a paranoiac patient may be sound outside his delusional system and all that refers to it. KRAEPELIN, *op. cit. supra,* note 51 at 223, says of the paranoiac that: "Activity and conduct often remain without any very definite disorder. The patients are mostly able even to earn their living permanently without being specially conspicuous in their surroundings."

[65] In Reg. v. Barton, 3 Cox C. C. 275 (1848) the judge remarked, "The excuse of an irresistible impulse, co-existing with the full possession of the reasoning powers might be urged in justification of every crime known to the law—for every man might be said, and truly, not to commit any crime except under the influence of some irresistible impulse." See WEIHOFEN, *op. cit. supra,* note 5 at 15.

[66] Approximately 17 states and the District of Columbia have added irresistible impulse to the test for insanity. WEIHOFEN, *op. cit. supra,* note 5 at 16 lists the following states: Alabama, Arkansas, Colorado, Connecticut, Delaware, Illinois,

mind wherein the subject knew the nature and quality of the act and that it was wrong, but was uncontrollably compelled to commit it.[67] A majority of modern jurisdictions have refused to recognize this second principal effort to alleviate the harsh and inflexible rule of *McNaughton's Case*[68] (the insane delusion test of *McNaughton's Case* being the first). Those courts have subscribed either to the view that there is no such thing as irresistible impulse[69] or that such a state of mind is too difficult to prove.[70]

It seems quite clear, however, that irresistible or nearly irresistible impulses may be symptoms of varying stages of insanity.[71] This being true, the courts should take cognizance of their existence and should indeed go further than courts which already have recognized them. The present rule allows the victim to be excused only if the impulse was clearly irresistible and it imposes strict responsibility in cases where there was any semblance of control over the will power.[72]

There is great medical and legal evidence to the effect that there are numerous types of mental aberration of which a disordered will

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Indiana, Kentucky, Louisiana, Massachusetts, Michigan, Montana, New Mexico, Ohio, Vermont, Virginia and Wyoming. Of these, he states Louisiana, Massachusetts and New Mexico are doubtful. He further declares: "The U. S. Supreme Court also seems to have adopted the irresistible impulse test." See also GLUECK, *op. cit. supra,* note 2 at 267, for a list of jurisdictions employing the test and an analysis of cases.

[67] ". . . he had so far lost the *power to choose* between the right and wrong, and to avoid doing the act in question, as that his free agency was at the time destroyed . . ." Parsons v. State, 81 Ala. 577, 2 So. 854, 866 (1887).

[68] WEIHOFEN, *op. cit. supra,* note 5 at 15.

[69] It is often contended that irresistible impulse is only *unresisted* impulse. Note 34 MICH. L. REV. 569, 570 (1936). See GLUECK, *op. cit. supra,* note 2 at 235.

[70] See GOODHART, ESSAYS ON JURISPRUDENCE AND THE COMMON LAW 47 (1931). And see MEREDITH, *op. cit. supra,* note 7 at 61 *et seq.;* GLUECK, *op. cit. supra,* note 2 at 233.

[71] "In contending that a person may by some irresistible impulse be compelled to some action, the nature of which he knows and knows to be wrong, medical authorities, after pointing out that insanity more frequently attacks a person's Will and Emotions than his intellectual power, claim that a conative force of insanity (affecting the will and emotions) may exist alongside an unimpaired intellect. *Thus a good and sane intellect may be entirely governed by a corrupted and insane will.* For this reason it is urged that the McNaughton rules, in treating insanity as a matter of intelligence and not of will, are inadequate and should be changed in the light of modern medical opinion." MEREDITH, *op. cit. supra,* note 7, at 112. See WEIHOFEN, *op. cit. supra,* note 5 at 45. "That there are cases in which mental unsoundness results in impulsions which are sometimes quite uncontrollable, is testified to by all psychiatrists." (He cites: KRAEPELIN, LECTURES ON CLINICAL PSYCHIATRY 314 (1906); NOYES, TEXTBOOK OF PSYCHIATRY 86 (1927); PATON, PSYCHIATRY 100 (1905).

[72] Comm. v. Rogers, 7 Metc. (Mass.) 500 (1844). ". . . the question will be, whether the disease existed to so high a degree, that for the time being it overwhelmed the reason conscience, and judgment, and whether the prisoner, in committing the homicide, acted from an *irresistible* and *uncontrollable* impulse: If so, then the act was not the act of a voluntary agent, but the involuntary act of the body, without the concurrence of a mind directing it." (Writer's italics.) See GLUECK, *op. cit. supra,* note 2 at 307.

power may be a symptom and that the will power may be either destroyed or only impaired.[73]

Authorities recognize several types of irresistible impulse. The phrase has been applied to "kleptomania"—an irresistible impulse to steal, "pyromania"—an irresistible impulse to set fires, and "homicidal mania"—an irresistible impulse to kill.[74] Weihofen adds "dipsomania" —an impulse to drink[75]—to this list and declares:

> "Impulsions may be present in a number of disorders . . . It seems most cases of pathologic impulses concern abnormalities of the sex life."[76]

The suggestion of sexual abnormality raises the question of the so-called sex crime which is an increasingly severe and vexing problem for the courts.[77] Krafft-Ebing, a distinguished authority in this field, declares that "When the sexual instinct is perverse (states of psychical degeneration), it may, at the same time, be so intensified as to be irresistible."[78] He goes on, however, to describe circumstances in which the impulse may be something less than irresistible.[79] When this condition exists, he declares:

> "(It) exerts an influence on the motive of the incriminating act; and a just judge, notwithstanding the lack of legal irresponsibility due to mental defect or disease, will recognize the circumstances which ameliorate the heinousness of the crime."[80]

And yet, while we find in the legal concept of irresistible impulse an

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[73] See GLUECK, *op. cit. supra,* note 2 at 304, 307 *et seq.;* WEIHOFEN, *op. cit supra* 5 at 45.

[74] GLUECK, *op. cit. supra,* note 2 at 304.

[75] GLUECK, *op. cit. supra,* note 5 at 45, n. 85. Glueck defines dipsomaniacs as ". . . those who are . . . at certain periods . . . seized with the most uncontrollable cravings for alcohol . . . ," *op. cit. supra,* note 2 at 344. "William James in his Psychology reports the case of a dipsomaniac, an inmate of an almshouse in Ohio, who, driven by the craving for alcohol, deliberately amputated his arm with an axe and ran into the main hall begging for a bowl of water and some alcohol. The attendants, who saw the bleeding stump, were horrified and did as he wished. He immersed the bleeding stump into the basin of water and alcohol for a moment or two, and with the uninjured hand raised the bowl, drank the contents of alcohol, blood, and water in a few gulps, and heaved a sigh of relief." Note N. Y. UNIV. L. REV. 518 (1937). JACOBY, *op. cit. supra,* note 17 at 301, declares that chronic misuse of narcotics, like the chronic misuse of alcohol, also leads to mental derangement. In the use of morphine, he relates, the will power becomes markedly affected from the very beginning.

[76] WEIHOFEN, *op cit. supra,* note 5 at 45, n. 85.

[77] "Criminal statistics prove the sad fact that sexual crimes are progressively increasing in our modern civilization." KRAFFT-EBING, *op. cit. supra,* note 52 at 498. "In no domain of criminal law is cooperation of judge and medical expert so much to be desired as in that of sexual delinquencies; and here only anthropological and clinical investigation can afford light and knowledge." *Id.* at 501.

[78] *Id.* at 503.

[79] *Ibid.*

[80] *Ibid.*

apparent attempt to soften the inflexible rules of *McNaughton's Case,* the minority of courts upholding it have failed to allow for the impulse that is less than irresistible. They have fallen into the same error that they sought to alleviate and have left no room for intermediary stages of mental disorder and their accompanying semi-responsibility. Thus, we find that not only have the courts established by ancient precedent a rigid test of right-and-wrong which allows no room for partial or semi-insanity, but, also, that the courts which have sought to alleviate the problem by introducing the concept of irresistible impulse have also imposed a rigid test that demands the impulse be completely irresistible or it is no defense. Again there is no middle ground; again there is no mitigation.

Therefore, in the law of insanity, there is a crying need for reform. The psychiatric recognition of semi-insanity and semi-responsibility demands that the law be revised so as to alleviate its present inadequacy and injustice. What then should be adopted by the courts as a reasonable solution to this problem? There have been two avenues of modern approach to a legal recognition of semi-insanity and semi-responsibility. Under the first method, the courts have viewed the criminal act and determined whether the offender was in such a state of mind as to be capable of the essential elements of that crime as defined by the law. In short, the inquiry is: What crime was committed?[81] Thus the various elements of murder, burglary, etc., are analyzed in connection with the defendant's state of mind at the time of committing the act.[82] This method has received growing favor among the courts in the realm of homicide where first degree murder has been reduced to second degree murder because the mental condition of the defendant precluded the premeditation which is requisite for murder in the first degree.[83]

The law has long recognized the fundamental principle that one who suffers from the effects of alcoholic intoxication may be considered as not having the specific intent necessary to certain crimes.[84] The United States Supreme Court left the door open for extension of

[81] Weihofen and Overholser, *Mental Disorder Affecting the Degree of Crime,* 56 YALE L. J. 959, 962 (1947).

[82] *Ibid.*

[83] *Id.* at 964. Taylor, *op. cit. supra,* note 9 at 636.

[84] See Director of Public Prosecutions v. Beard, House of Lords (1920) A.C. 479, 499 (1920). ". . . where a specific intent is an essential element in the offense, evidence of a state of drunkenness rendering the accused incapable of forming such an intent should be taken into consideration in order to determine whether he had in fact formed the intent necessary to constitute the particular crime. If he was so drunk that he was incapable of forming the intent required he could not be convicted of a crime which was committed only if the intent was proved." And see Taylor, *op. cit. supra,* note 9 at 635.

this doctrine in the case of *Hopt* v. *United States*[85] where it was declared that a lesser crime may be committed where the defendant is incapable of specific intent because of "intoxication *or otherwise.*"[86] (Writer's italics.)

In the recent case of *Fisher* v. *United States,*[87] the Supreme Court was confronted with a situation where the defendant knew the nature and quality of the act he was committing and undoubtedly knew it was wrong. But yet he was somewhat feeble-minded, was prone to excitability, was on the occasion of the crime stirred to great wrath, terrified and angered by subsequent developments, and finally killed in order to alleviate the situation. The defendant, a Negro, was employed as a janitor in a library. He was constantly scolded by the white lady librarian who, he discovered, had reported his poor work to the supervisor. Perhaps as a result of his feeble-mindedness, on the occasion that the librarian scolded him and called him a "black nigger," he was so enraged that he struck her. She ran to the window screaming. She continued to scream despite his pleas to stop. He was frantic, he picked up a wooden object and knocked her senseless. He then carried her into another room and busily proceeded to clean up the blood. She came to and began screaming again. He pleaded and pleaded for her to stop and finally in blind desperation he cut her throat.[88]

The majority of the Court affirmed his conviction for murder in the first degree. There were two stormy dissents in which the principle of reducing the grade of the offense was advanced.[89] It was argued that the jury should be instructed to the effect that, while a mental disorder may not be so great as to excuse entirely, it may still be considered as reducing the offense to lesser crime according to its statutory definition. A jury, they declared, should be permitted to determine whether or not there were such deliberation and premeditation as are required by Congress for the crime of murder in the first degree.[90] The majority simply applied the right-and-wrong

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[85] 104 U.S. 631 (1881).

[86] "When a statute establishing different degrees of murder requires deliberate premeditation in order to constitute murder in the first degree, the question whether the accused is in such a condition of mind, by reason of drunkenness or otherwise, as to be incapable of deliberate premeditation, necessarily becomes a material subject of consideration by the jury." 104 U.S. 631, 634 (1881).

[87] 328 U.S. 463 (1946).

[88] The salient facts of the case are described in best detail by Justice Frankfurter in his dissent, at 477. Taylor, *op. cit. supra,* note 9 at 626, describes and analyzes the circumstances of the case.

[89] Frankfurter's dissent starts at 477; Murphy's opinion appears at 490.

[90] Murphy declares, at 492, ". . . there are persons who, while not totally insane, possess such low mental powers as to be incapable of the deliberation and

test of *McNaughton's Case* and found him guilty. They did not, however, reject the logic advanced by Justices Frankfurter and Murphy in their respective dissents. They merely stated that such a change in the established law should not begin in the Supreme Court but should stem from statutory enactment or at least from the decision of the District Court.[91] Thus the case was actually a victory for this were noncommital.

Weihofen and Overholser, in a recent article,[92] declare that about half of the nation's courts have adopted the concept that a defendant may suffer from such a mental disturbance that, while not excusing entirely, it will reduce the grade of the offense. In other words, they recognize that the defendant's mental state may be such that he could not have had the necessary intent or premeditation required by statute of the crime with which he is charged.[93] Thus he is convicted of a lesser crime.[94]

This system represents a large and growing effort on the part of the courts to correct the present situation. However, this method is at best only mechanical and is nothing more than a step in the right direction. Thus far it has seen wide use only in the case of reducing murder from the first to the second degree.[95] This application is obviously limited to those states which have some statutory difference between the two, *e. g.*, presence of premeditation.[96] Only a very few courts have allowed partial insanity to reduce the offense to manslaughter.[97] It would appear that a much wider application of the doctrine is advisable.

A more reasonable but procedurally more difficult approach to the problem lies in simple mitigation of the gravity of the offense. In

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premeditation requisite to statutory first degree murder. Yet under the rule adopted by the court below, the jury must either condemn such persons to death on the false premise that they possess the mental requirements of a first degree murderer or free them completely from criminal responsibility and turn them loose among society. The jury is forbidden to find them guilty of a lesser degree of murder by reason of their generally weakened or disordered intellect."

[91] The Court said at 476: "For this Court to force the District of Columbia to adopt such a requirement for criminal trials would involve a fundamental change in the common law theory of responsibility. . . . Such a radical departure from the common law concepts is more properly a subject for the exercise of the legislative power or at least for the discretion of the courts of the District." doctrine. The dissenting judges were in favor of it and the others

[92] *Op. cit. supra,* note 81.

[93] *Ibid.*

[94] *Ibid.*

[95] See WEIHOFEN, *op. cit. supra,* note 5 at 109 *et seq.*, where he presents an exhaustive analysis of cases in the various jurisdictions.

[96] In those states where there are no degrees of murder there would be no way to reduce the gravity of the offense by employing this method.

[97] See the analysis of cases in WEIHOFEN, *op. cit. supra,* note 5 at 109 *et seq.* See the early Illinois case, Fisher v. People, 23 Ill. 218 (1859).

adopting the former approach, the courts have adhered closely to defined limits and reduced one crime to another in accordance with their statutory definitions. Such a system is artificial and does not strike at the heart of the problem. For example, as noted earlier, Krafft-Ebing speaks of sex crimes which involve irresistible impulse and then he describes circumstances wherein the mental disorder only ". . . exerts an influence on the motive of the incriminating act. . . ."[98] In such case, he declares, ". . . a just judge, notwithstanding the lack of legal irresponsibility . . . will recognize the circumstances which ameliorate the heinousness of the crime."[99] The idea of mitigating the offense by taking stock of circumstances is no stranger to the law. Most criminal statutes provide varying sentences to be imposed as judge and jury deem advisable under the circumstances.[100] Judges have always been given great latitude in passing sentence.[101] The law has long recognized that ordinary human frailty will lead to the perpetration of crimes quite serious in nature and yet involving less culpability than that contemplated by the punishment associated with the crime. The courts have allowed the heat of passion arising from sudden combat or seeing one's wife in adultery to reduce a murder to manslaughter.[102] And yet only a very few courts have permitted mitigation in the case of mental disorder.[103] Psychiatrists have estab-

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[98] KRAFFT-EBING, *op. cit. supra,* note 52 at 503.

[99] *Ibid.*

[100] As for example, a penal statute may provide that the defendant upon conviction shall be imprisoned for not less than 2 nor more than 20 years. Many states have adopted a system of allowing a jury to mitigate punishment upon evidence of mental defect. See WEIHOFEN's digest, *op. cit. supra,* note 5 at 109 *et seq.*

[101] "But both before and since the American colonies became a nation, courts in this country and in England practiced a policy under which a sentencing judge could exercise a wide discretion in the sources and types of evidence used to assist him in determining the kind and extent of punishment to be imposed within limits fixed by law." Williams v. New York, 337 U.S. 241, 246 (1949).

[102] See Rex v. Manchuck, 4 D. L. R. 737 (1937) where provocation was held to reduce murder to manslaughter. See also Regina v. Chapman, 12 Cox C. C. 4 (1872); State v. Yang, 74 Conn. 177, 50 Atl. 37 (1901); note 51 HARV. L. REV. 928 (1938); and note 18 CORNELL L. Q. 376 (1933). See also Taylor, *op. cit supra,* note 9 at 637.

[103] See WEIHOFEN's digest of cases, *op. cit. supra,* note 5 at 109 *et seq.* Apparently the modern writers are willing to reduce the crime to one of a lesser degree according to statutory definition but are not willing to assume that the crime is committed but a lesser punishment attached because of lessened responsibility. Taylor, *op. cit. supra,* note 9 at 630, declares: "The theory of 'partial', 'limited', or 'semi-' responsibility admits, in my opinion, that the defendant is guilty of the crime charged, but for some reason or other—here, usually partial insanity—his responsibility should not be of the same degree as that placed upon a normal individual. My theory is, rather, 'full' responsibility, but only for the crime actually committed." See also WEIHOFEN, *op. cit. supra,* note 5 at 98-108, 411-415; GLUECK, *op. cit. supra,* note 2 at 310, n. 1; Keedy, *Insanity and Criminal Responsibility,* 30 HARV. L. REV. 535, 551 (1917); Weihofen, *Partial Insanity and Criminal Intent,* 24 ILL. L. REV. 505, 514 (1930).

lished that partial insanities may influence criminal acts. Many courts have tried to alleviate the situation by reducing first degree murder to second degree. Why not go all the way?

The principal criticism of such an approach might be that it would open the door to limitless defenses and completely submerge an already complex and overloaded situation in a sea of further confusion. However, it has been established that a defendant is entitled to the defense of insanity. To deny this right is unconstitutional.[104] Neither is it constitutional to convict an offender of a crime and to punish him for that crime when his mental state is such that he should not bear full responsibility.[105] It is the duty of those who administer the law to devise a system whereby this obvious injustice may be corrected.

The writer, in an earlier note,[106] has suggested and urged the adoption of a number of reforms in the administration of insanity as a defense in criminal law, to which the reader is referred. Briefly, the reforms suggested include: sorting out those who are obviously insane before trial, routine mental examination of all those indicted for crime, abolition of the right-and-wrong test and adoption of the New Hampshire rule than insanity is a jury question without a fixed test, establishment of a standard for mental "experts" before they may be competent witnesses, and a provision for the judge to consult with state mental authorities before passing sentence. Under such a program the entire defense of insanity could be much more readily handled.

Such procedural devices are but the beginnings of a system which properly developed might well separate and allot to their proper places those accused of crime but who have varying degrees of partial insanity.

In conclusion, it may be emphasized that the problem of administering the defense of insanity has been inadequately handled by the courts. The time has come for drastic readjustment both in the substantive law of definition and also in the procedural law of administration. It is hoped that the suggestions made in this note for improvement and change in both of these will be indicative of some of the things that should be done and of rational ways to do them.

ROBERT HALL SMITH

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[104] Sinclair v. State, 161 Miss. 142, 132 So. 581 (1931); State v. Strasburg, 60 Wash. 106, 110 Pac. 1020 (1910).

[105] Taylor, *op. cit supra*, note 9 at 642. "When a man's life or liberty is at stake he should be adjudged according to his personal culpability as well as by the objective seriousness of the crime." Fisher v. United States, 328 U.S. 463, 492 (1946) (Murphy's dissent).

[106] 40 KY. L. J. 311, 320 (1952).